

This letter concerns licenses of computer software and software maintenance agreements. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

August 14, 2006

Dear Xxxxx:

This letter is in response to your letter dated June 6, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We would like clarification on two areas related to nontaxable software licensing:

- 1) Item A requires that a license *"is evidenced by a written agreement signed by the licensor and the customer."* This seems like a rather archaic requirement since software licensing is frequently done electronically. It is very common for software to be licensed over the internet and the customer to check a box that states that they accept the license terms. For most purposes this constitutes a binding agreement. Is there any latitude in application of the "signed agreement" requirement? It seems that an electronic or virtual signature should be sufficient.
- 2) A second area of concern is "software maintenance." §130.1935 clearly states that *"Charges for updates of canned software are considered to be sales of software."* The question is will updates take on the character of the underlying software? If the underlying software constitutes a nontaxable license under §130.1935 will maintenance charges for updates to licensed software be nontaxable?

If you need clarification please call me.

**DEPARTMENT'S RESPONSE:**

Your letter states that it is very common for software to be licensed over the internet and the customer to check a box that states that they accept the license terms. Acceptance in this manner does not constitute a written agreement signed by the licensor and the customer for purposes of subsection (a)(1)(A) of Section 130.1935. To meet the signature requirement for an exempt software license, the agreement must contain the written signature of the licensor and customer.

You also asked about software updates transferred incident to a maintenance agreement. If the maintenance agreement includes software updates and the software updates are transferred incident to a license agreement that meets the requirements for an exempt license under subsection (a)(1) of Section 130.1935, then the software updates are exempt from tax. For further information regarding the taxation of software maintenance agreements, please see general information letter ST 02-0172-GIL, which may be found on the Department's internet website under the heading of "Laws/Regs/Rulings."

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore  
Associate Counsel

SJM:msk